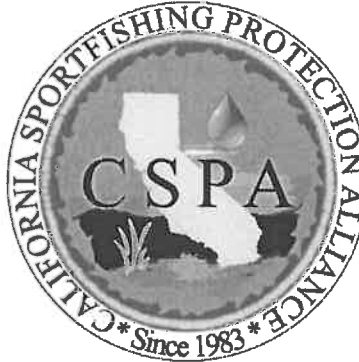


**CENTRAL DELTA WATER AGENCY
SOUTH DELTA WATER AGENCY
LOCAL AGENCIES OF THE NORTH DELTA**



April 17, 2014

Assemblymember Anthony Rendon
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0063

Re: AB1331 As Amended April 8, 2014

Dear Assemblymember Rendon:

These comments are jointly submitted on behalf of the Central Delta Water Agency and Local Agencies of the North Delta ("LAND").¹ As interests within the Delta, we submit these comments in an effort to constructively engage primarily on the issue primarily on Bond funding for Chapter 8, Sacramento-San Joaquin Delta Sustainability. Because of our concern for existing agriculture and existing communities in the Delta we, unlike many, are not asking for additional moneys to be allocated toward our region. Instead, we urge that any Bond investments in the Delta be made with regard to the existing communities and with the recognition that any bond funded activities in the Delta must both be supported by sound science and be planned and maintained in a manner that is consistent with the maintenance of the agriculturally-based economy of the Delta.

Focusing specifically on the fish that have received so much attention, we do not believe that additional conversion of agricultural land in the Delta to so-called habitat, will help much, if at all. It is well-documented that the focal fish populations of the Delta crashed after the construction of the CVP and SWP pumps in the south Delta, well after the reclamation of the Delta islands occurred around the turn of the 19th century. Looking to habitat creation as a panacea for the damage done to the Delta by the SWP and CVP – along with other stressors – is not likely to succeed and therefore does not provide the public benefits necessary to justify Bond funding. Moreover, as explained more fully below, to the extent the SWP and CVP have obligations to mitigate for existing impacts, those actions would not represent the types of actions that should be funded by the statewide bonds on behalf of all taxpayers in the state.

¹ LAND is a coalition comprised of local reclamation, levee and water districts in the northern geographic area of the Delta.

I. Background

We appreciate your commitment to a thorough and equitable process of developing the Water Bond. While we support certain investments in the Delta, we are concerned that AB 1331 currently allows for a significant portion of the funding to be used to shift the costs of the Bay Delta Conservation Plan (“BDCP”) away from the project contractors and onto the general taxpayers of the State. As you know, the BDCP seeks issuance of a fifty (50) year take permit of endangered species for SWP/CVP exports from the Delta.

According to the BDCP itself, “The BDCP is expected to secure a large portion of the funds allocated to Delta sustainability, as well as smaller portions of funds allocated to conservation and watershed protection.” (Draft BDCP, Chapter 8, p. 8-48 (Nov. 2013), see Exhibit A, BDCP Chapter 8 excerpts.) The exact amounts intended to be used from two separate statewide bonds are detailed in Table 8-37, and total over \$3.7 billion. It is for this reason, that proponents of BDCP have consistently called for larger funding allocations to Chapter 8 “Sacramento San Joaquin Delta Sustainability.”

Proponents of the BDCP claim that the habitat and conservation proposals in the plan as having statewide public benefits, but clear statewide benefits are not present. The current public review draft of the BDCP shows that implementation of the BDCP could potentially imperil nine key species including salmon, Delta smelt and greater sandhill cranes.² Independent scientific review has repeatedly found that the BDCP is overly optimistic with respect to the potential benefits to imperiled species by creating new habitat in the Delta, which cannot substitute for flows.³ Delta restoration projects must be developed using the best available science and criteria developed through transparent, locally inclusive processes to that actually benefit species at risk, not to fulfill regulatory requirements for one project. The so called “restoration” components of BDCP do not meet these basic criteria and should not receive public funds through a water bond or any other source. In short, it is a misnomer to call funds destined for BDCP “Delta Sustainability.”

While we oppose funding of any aspect of BDCP, some habitat improvement and conservation projects could be helpful in the Delta and its watersheds. It is vital, however, that these habitat projects be conducted in a manner that is compatible with existing agricultural uses and communities in the Delta. Notably, there are already thousands of acres of land in the Delta that are already owned by the state or other entities that are already or are planned for habitat and related uses. (See Exhibit B, Habitat Types Acreage Table.) Any Bond funds should first be directed

² See article by Matt Weiser, *Fate still unclear for nine species in Delta water tunnel plan* (December 18, 2014), available at: <http://www.sacbee.com/2013/12/18/6009767/fate-still-unclear-for-nine-species.html> (species include: Longfin smelt, Delta smelt, Winter Spring and Fall Chinook salmon, Green sturgeon, White sturgeon, Steelhead and Greater sandhill crane).

³ See, e.g., Delta Science Program Independent Review Panel Report (BDCP Effects Analysis Review, Phase 3), p. 25 (“The Effects Analysis does not adequately defend conclusions regarding the net effects of the BDCP, including habitat restoration. The net effects analysis tends to over-reach conclusions of positive benefits for covered fish species, given the inability to quantify the overall net effect and the realization of high uncertainty.”) ; see also Nature Conservancy and American Rivers, Panel Review of the Draft Bay Delta Conservation Plan (2013), p. 82 (“The BDCP is overly optimistic about the potential benefits to delta and longfin smelt of physical habitat restoration.”).

toward improving the habitat values of those lands, prior to the purchase and conversion of new lands to be modified and managed for habitat purposes. The amendments we propose below promote this direction.

From a historical perspective, moreover, it is important to note that the costs of the SWP launched by the passage of the California Water Resources Development Bond Act (1960 General Election) was to be paid by the project contractors. The argument in favor of passage clearly provided:

The provision will not be a burden on the taxpayer; no new state taxes are involved; the bonds are to be repaid from project revenues, through the sale of water and power. In other words, it will pay for itself.

(See Exhibit C, copy of the Argument in Favor of the passage; see also Exhibit D, quotation of then Governor Edmund G. (Pat) Brown in the case of Goodman v. County of Riverside (1983) 140 Cal.App.3d 900, 906, wherein the Governor stated “the plan itself is completely self-supporting. The law provides that the contracts have to provide for the repayment of the cost of the entire Project.”

The SWP was a plan to continue to develop water projects at contractor expense to meet the obligations to the Delta and other areas of origin, including salinity control for the Delta (Water Code, §§11460 et seq. and Water Code, §§ 12200 et seq.); to preserve fish and wildlife (Water Code, §11912); and to meet the project Table A entitlements of about 4.25 million acre feet. No water was to be diverted from the Delta for use elsewhere unless adequate supplies for the Delta were first provided.

The SWP plan recognized that development within the watersheds, including recapture of project water and demands for Table A entitlements would build over time and that by the year 2000 five million acre feet per year of supplemental water delivered to the Delta would be required from developments in North Coast watersheds (Exhibit E). None of such North Coast water was developed. The lack of developed water together with the failure to provide a drainage system for the San Joaquin Valley and failure of the SWP to operate with sufficient carryover storage to meet senior obligations and water quality standards during dry years, are the causes of the crises which confronts us today.

The financial obligations of the SWP contractors should not now be shifted onto the state taxpayers. Yet, the BDCP documents clearly show the intent is to shift the cost of conservation measures claimed to be ecosystem enhancement onto the general taxpayers. Endangered fish have not been preserved by the SWP and in fact have suffered a severe decline since the start of project operations and there is no direct correlation between the fish declines and terrestrial or wetland habitat in the Delta (Exhibit F). In order to ensure the requisite public benefits, conditions around the types of restoration projects that qualify for funding are needed – whether the restoration is BDCP related or not.

For historical perspective on why we are here now, it is important to recognize that the State Water Resources Control Board in its 1978 Decision 1485 at page 13, found that: “To provide full mitigation of project impacts on all fishery species now would require the virtual shutting down of the project export pumps.” Yet Project exports were not curtailed and in fact continued to increase after 1978 (Exhibit G).

II. Specific Suggestions to April 8, 2014 Version of AB 1331

It is in the context of the above that we request the following amendments:

Page 3, lines 27-29, Section 79701(d)

Replace the last sentence with the following: “However, the planned water storage projects in the North Coast of California which were to supplement water flowing into the Delta by 5 million acre ft. per year by the year 2000 were not constructed and the water environment has deteriorated.”

Page 9, line 7, Section 79711(a)

At the beginning before “Funds” insert “Subject to the limitations in Section 79712”.

Page 9, line 10, Section 79711(b)

This language should be replaced with the following language from the earlier versions of AB 1331:

“Funds provided by this division shall not be expended for the acquisition or transfer of water rights except for a permanent dedication of water approved in accordance with Section 1707 where the state board specifies that the water is in addition to water that is required for regulatory requirements as provided in subdivision (c) of Section 1707. The requirement that a dedication of water be permanent shall not preclude the expenditure of funds provided by this division for the initiation of the dedication as a short-term or temporary urgency change, that is approved in accordance with Section 1707 and either Chapter 6.6 (commencing with Section 1435) of, or Chapter 10.5 (commencing with Section 1725) of, Part 2 of Division 2, during the period required to prepare any environmental documentation and for approval of permanent dedication.”

This change is crucial as the proponents of BDCP intend to substitute purchase of water with public funds when the habitat creation does not show the measureable improvements for species.⁴ (See Exhibit H, a 2012 document obtained from the Kern County Water Agency showing BDCP project proponents plan to use bond funds for water purchases, also available at: http://www.contracostatimes.com/ci_10152127.) The prior language protected against creation of a new version of the failed Environmental Water Account, which cost taxpayers dearly and delivered few benefits to fish. This Bond should not become the vehicle for such waste, regardless of the outcome of BDCP. Moreover, requiring water transfers to go through the normal State Water Resources Control Board Water Code section 1707 transfer process provides needed protections to the environment and would help ensure that environmental impacts of water transfers (particularly the practice of groundwater substitution) are fully reviewed and properly mitigated.

Page 9, line 16, Section 79712

Replace “agencies” with “contractors”.

⁴ We note also that Jerry Meral, the former deputy secretary of the California Natural Resources Agency in charge of the Bay Delta Conservation Planning Program recently suggested language on behalf of the National Heritage Institute that explicitly allows for purchase of water with Water Bond funds.

Page 9, line 17, Section 79712

After the word “facilities” insert “, and the fifty (50) year ESA take permit secured through the BDCP.”

Also add the following: “Funds provided by this division shall not be expended for 1) the mitigation of any of the impacts of the State Water Project or Central Valley Project, or 2) the cost of compliance of such projects with any regulatory requirements, including without limitation biological opinions, take permits, reasonable and prudent actions, and water quality standards, or 3) the cost to carry out the affirmative obligations of the projects to preserve and restore fish and wildlife, including without limitation achieving the CVPIA restoration of anadromous fish to ensure a sustainable natural production at levels not less than twice the average levels attained during the period of 1967-1991, or 4) the costs to ensure a San Joaquin Valley drainage solution, or 5) any costs related to the Bay Delta Conservation Plan (BDCP).”

Page 18, lines 20-22, Section 79732(e)

Delete lines 20-22.

Note: The specific settlements are set forth in Section 79734 and blanket funding of unspecified settlements is not in the public interest.

Page 19, line 9, Section 79732(n)

Add the following: “Funds provided by this chapter shall not be expended for 1) the mitigation of any of the impacts of the State Water Project or Central Valley Project, or 2) the cost of compliance of such projects with any regulatory requirements, including without limitation biological opinions, take permits, reasonable and prudent actions, and water quality standards, or 3) the cost to carry out the affirmative obligations of the projects to preserve and restore fish and wildlife, including without limitation achieving the CVPIA restoration of anadromous fish to ensure a sustainable natural production at levels not less than twice the average levels attained during the period of 1967-1991, or 4) the costs to ensure a San Joaquin Valley drainage solution, or 5) any costs related to the Bay Delta Conservation Plan (BDCP).”

Page 21, line 30, Section 79741(c)

Include language from prior version regarding reduced future reliance on the Delta, consistent with the Delta Reform Act of 2009.

“Improve regional water self-reliance, including projects that reduce future reliance on the Delta watershed in meeting California’s future water supply needs, consistent with Section 85021.”

Page 30, line 8, Section 79750(a)(1)

Change “Four hundred million dollars (\$400,000,000)” to “Eight hundred million dollars (\$800,000,000)”.

Note: Due to the vast amount of habitat already in place and anticipated from private projects, including the Delta Wetlands Project, there is less need for investment in ecosystem than there is for

maintaining and improving levees which are essential to protection of local habitat, agriculture, recreation, water quality and the export of water from the Delta.

Page 30, line 12, Section 79750(a)(2)

Change “Six hundred million dollars (\$600,000,000)” to “Two hundred million dollars (\$200,000,000)”.

As discussed above, we submit that there is limited justification for conversion of agricultural lands to create additional habitat in the Delta. Moreover, the SWP and the CVP are already required to create significant acreages of habitat under the Biological Opinions, including 8,000 acres of intertidal and associated subtidal habitat in the Delta and Suisun Marsh to benefit longfin smelt. These Biological Opinions were recently upheld by the Ninth Circuit Court of Appeals, and the SWP/CVP are already moving forward with those projects. (See Exhibit I, showing map of planned habitat restoration projects already underway to meet the requirements of the Biological Opinion.)

Page 30, line 14, Section 79750(a)(2)

Add “and the Delta Protection Commission’s Delta Investment Fund established under Public Resources Code, section 29778.5 . . .”

The Delta Investment Fund, established in 2009 and administered by the Delta Protection Commission is the vehicle to promote the sustainability of the Delta. (See Exhibit J, What is the Delta Investment Fund?) Without such funding, proposed section 79751, subdivision (c), cannot be adequately carried out.

Page 30, lines 17-19, Section 79750(a)(3)

Delete the entirety of (3).

Note: Specific allocation is necessary to avoid circumvention of the purpose and need. The levee programs require a net gain in habitat although such is incidental to the primary purpose of levee maintenance and improvement. The mix of the two objectives in the Delta is not cost effective.

Page 30, line 23, Section 79750(b)

Add “the funding restrictions in Sections 79712 shall apply.”

Page 31 after line 4, Section 79754

Add “(d) In the Delta as defined in 12220 the implementation of this section shall to the maximum extent possible seek to achieve the objectives through projects located in the channels, on the channel islands, on the former islands and areas which were in a flooded condition as of January 1, 2014, on lands owned in fee as of January 1, 2014 by State and Federal agencies, for habitat on those lands in public or nonprofit ownership for conservation purposes as of January 1, 2014, and for operation, maintenance and improvement of facilities at Brannan Andrus State Park and other existing state and local parks, for operation, maintenance and improvement of existing public and commercial boat launching, docking and service facilities, for improvements, policing and refuse clean-up of public access locations along existing public roadways and for the improvement and addition of camping areas as a part of existing public and commercial marinas. Project funding shall include

grants to public agencies sufficient to establish annuities or endowments to pay all future property taxes, local agency and local district assessments, fees and charges and other levies against the property had the property remained in private ownership. Title to lands and easements shall to the maximum extent possible remain with the landowner and/or a local agency with property management capability. Projects that propagate or include endangered or threatened species shall include adequate buffers and safe harbor or other protective measures to avoid interference with agricultural operations on both the subject land and neighboring lands. Adequate funding for such measures and for acquiring, managing and monitoring shall be included in the grant. Projects outside the scope of the above listing shall be limited to the funding of projects approved in advance by the Board of Supervisors of the county or counties in which the project is located.”

Page 31, line 9, Section 79755(a)

Replace “for any of the following” with “as follows”.

Page 31, line 10, Section 79755(a)(1)

Before “Local” insert the following: “Of the funds provided by this section, not less than two hundred million dollars (\$200,000,000) shall be committed to fund”.

Page 31, line 12, Section 79755(a)(1)

Add “The commitment of funding and program shall extend for a period of years until the funding is exhausted.”

Page 31, line 13, Section 79755(a)(2)

Before “Special” insert the following: “Of the funds provided by this section, not less than four hundred million dollars (\$400,000,000) shall be committed to fund”.

Page 31, line 15, Section 79755(a)(2)

Add “The commitment of funding and program shall extend for a period of years until the funding is exhausted.”

Page 31, line 27, Section 79755

Add new section (d) as follows: “Funding for levee projects in the Delta as defined in 12220 shall seek to achieve a base level of protection for all levee systems at least equivalent to the PL 84-99 USACE standard for agricultural levees and for those levee systems most critical to protect infrastructure, water quality or water delivery a higher level of protection as deemed appropriate by the Department of Water Resources.”

Page 34, line 16, Section 79765

Add the following: “(c) Funds provided by this chapter shall not be expended for 1) the mitigation of any of the impacts of the State Water Project or Central Valley Project, or 2) the cost of compliance of such projects with any regulatory requirements, including without limitation biological opinions, take permits, reasonable and prudent actions, and water quality standards, or 3) the cost to carry out the affirmative obligations of the projects to preserve and restore fish and wildlife, including

without limitation achieving the CVPIA restoration of anadromous fish to ensure a sustainable natural production at levels not less than twice the average levels attained during the period of 1967-1991, or 4) the costs to ensure a San Joaquin Valley drainage solution, or 5) any costs related to the Bay Delta Conservation Plan (BDCP).”

* * *

Thank you for considering these comments. Please contact the undersigned to discuss any of the suggestions in this letter.

Yours very truly,



Dante John Nomellini
Manager and Co-counsel CDWA



Barbara Barrigan-Parrilla
Restore the Delta



Osha R. Meserve
Counsel for LAND



Bill Jennings, Chairman
Executive Director
California Sportfishing Protection Alliance



John Herrick
Manager and Counsel SDWA

DJN:ka
Enclosures

cc: Senator Lois Wolk
Jim Metropolous